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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/816,384	03/26/2001	Yuichi Shirota	P 276714 41069-USPD2C-JSJ	8374

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EXAMINER	
FORD, JOHN K	

ART UNIT	PAPER NUMBER
3743	5

DATE MAILED: 04/29/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/816,384	Applicant(s) Shirota et al.
	Examiner FORD	Art Unit 3743

-- Th MAILING DATE of this communication appears on the cov r sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on ____.

2a)☐ This action is **FINAL**. 2b)☑ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☑ Claim(s) 1-9 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☑ Claim(s) 1-9 is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

15)☑ Notice of References Cited (PTO-892)
16)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
17)☑ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2.
18)☐ Interview Summary (PTO-413) Paper No(s). ____.
19)☐ Notice of Informal Patent Application (PTO-152)
20)☐ Other:

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless --
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 3, 6, 7 and 8 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by JP 6-156049.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP 6-156049 as applied to claims 1-3 and 6-8 are above, and further in view of DT 3501451 or Nagao et al. (4,696,340).

DT '451 (Fig. 6 and Fig. 5) teaches tubes 37 with serpentine fins between them (Fig. 5) aligned at an angle (Figure 6) relative to an offset blower 27.

To have used such a heat exchanger construction as taught by DT '451 with tubes oriented in the direction of airflow as the heat exchanger 28 in JP '049 would have been obvious to one of ordinary skill in the art.

Similarly, to have used Nagao's heat exchanger 2 in JP '049 so that air flow occurred in the direction of the tubes (as taught by Nagao) would have been obvious to one of ordinary skill.

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claims 1-8 above, and further in view of Brandecker or Gebhardt or Mullin or Bates or Marsteller.

Each of these references teaches an offset bottom-feed fan and heat exchanger tubes oriented generally parallel to fluid discharged from the fan.

To have oriented the tubes in JP '049/DT '451 or JP '049/Nagao to be generally parallel to the fan discharge would have been obvious to one of ordinary skill in the art, to improve air flow.

Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over JP 6-156049 as applied to claims 1-3 and 6-8 above, and further in view of JP-U-56-149819 and Netherlands 166433.

JP '819 teaches an offset blower and Netherlands '633 teaches a central mounting (Fig. 1) in the passenger compartment.

To have modified JP '049 with an offset blower (as taught by JP '819) to conserve space and to have installed JP '049 in the center of the vehicle (as taught by Netherlands '433) would have been obvious in vehicles to avoid taking up too much toom in the lateral (right-left) direction.

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible

harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington,* 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321© may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-9 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-7 of U.S. Patent No. 5,755,107 in view of the prior art applied to claims 1-9 above. The rejections formulated above are incorporated here by reference. To the extent that there is anything claimed here which is not claimed in claims 1-7 of USP 5,755,107 it would have been obvious to have used the prior art relied upon in the previous rejections, for the reasons stated there, to arrive at the subject matter claimed here.

Claims 1-9 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-16 of U.S. Patent No. 6,044,656 in view of the prior art applied to claims 1-9 above. The rejections formulated above are incorporated here by reference. To the extent that there is anything claimed here which is not claimed in claims 1-16 of USP 6,044,656 it would have been obvious to have used the prior art relied upon in the previous rejections, for the reasons stated there, to arrive at the subject matter claimed here.

See In re Goodman and please comment on why it does not apply here if applicant's wish to contest it.

Any inquiry concerning this communication should be directed to John Ford at telephone number (703) 308-2636.

John K. Ford
Primary Examiner

J. Ford

April 13, 2002